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1 Resource Conservation and Recovery Act, as amended, ("RCRA"), 42
2 U.S.C. § 6973(a). This authority was delegated on March 20, 1985
3 from the EPA Administrator to the Regional Administrators by EPA
4 Delegation No. 8-22-A and C; and further delegated to the EPA
5 Region 10 Director, Hazardous Waste Division, by Regional
6 Redelegation Order R10 1281.8 on September 30, 1985.

7 2.2 The Companies agree to undertake all actions
8 required by this Consent Order. In any action by EPA or the
9 United States to enforce the terms of this Consent Order, the
10 Companies agree not to contest the authority or jurisdiction of
11 EPA to issue or enforce this Consent Order or its terms.

12 13 III. PARTIES BOUND

14 3.1 This Consent Order shall apply to and be
15 binding upon EPA and upon the Companies, their successors and
16 assigns. No change in the ownership or corporate or other legal
17 status of the Companies shall alter their responsibilities under
18 this Consent Order.

19 3.2 Each Company shall provide a copy of this
20 Consent Order to all contractors, subcontractors, laboratories,
21 and consultants retained to conduct any work under this Consent
22 Order, and to any subsequent owners of or successors to 25% or
23 more of the outstanding shares of the Company or 10% of the total
24 assets of the Company. The Companies shall condition any
25 contracts to conduct any work under this Consent Order upon
26 satisfactory compliance with this Consent Order. Notwithstanding

1 the terms of any contract, the Companies are responsible for
2 compliance with this Consent Order and for ensuring that their
3 subsidiaries, employees, agents, contractors, consultants,
4 subcontractors, and attorneys comply with this Consent Order.

6 IV. PURPOSE AND OBJECTIVES

7 4.1 In entering into this Consent Order, the
8 general mutual objective of EPA and the Companies is to protect
9 the public health or welfare or the environment with regard to
10 the release of radionuclides in Southeast Idaho. Specifically,
11 the mutual purposes and objectives of the Parties are:

12 (A) To study the risk, if any, to exposed
13 individuals from radionuclide releases in Southeast Idaho
14 associated with elemental phosphorus slag, including determining
15 as precisely as possible the level of such releases, and
16 individual radiological exposures to slag-containing materials;
17 and

18 (B) To develop graded decision guidelines for
19 ranges of exposures to determine whether further actions may be
20 necessary or appropriate to reduce individual exposures
21 associated with elemental phosphorus slag.

23 V. DISCLAIMER

24 5.1 By signing this Consent Order and taking actions
25 under this Consent Order, the Companies do not agree with EPA's
26 Findings of Fact, Conclusions of Law or Determinations. Further,

1 acts pursuant to this Consent Order by the Companies shall not be
2 considered an admission of liability for any purpose in any
3 proceedings, and are not admissible as evidence against the
4 Companies in any judicial or administrative proceeding other than
5 a proceeding by the United States, including EPA, to enforce this
6 Consent Order. The Companies agree not to contest the validity
7 or terms of this Consent Order in any action brought by EPA to
8 enforce this Consent Order.
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10 VI. EPA FINDINGS OF FACT

11 6.1 Based on information available to EPA and for
12 the purposes of this Consent Order, EPA makes the following
13 Findings of Fact:

14 A. The Monsanto Company and FMC Corporation
15 operate elemental phosphorus manufacturing facilities
16 respectively in Soda Springs, Idaho and Pocatello, Idaho.
17 Elemental phosphorus slag ("slag") is a by-product of the
18 operation of those facilities.

19 B. The Monsanto Company is a Delaware Corporation
20 authorized to do business in the state of Idaho. FMC Corporation
21 is a Delaware Corporation authorized to do business in the state
22 of Idaho. Mailing addresses for the purposes of this Order are:

23 C.M. McCullough, Plant Manager
24 Monsanto Chemical Company
25 Soda Springs Plant
Post Office Box 816
Soda Springs, Idaho 83276
26

1 J.T. Bernasek, Plant Manager
2 FMC Corporation
3 Post Office Box 4111
4 Pocatello, Idaho 83202

5 C. The slag has been used in residential
6 construction; as paving aggregate for highways, streets and
7 sidewalks, including most of the streets in the cities of Soda
8 Springs and Pocatello; airport tarmacs; in roofing materials;
9 construction fill; and other uses in southeastern Idaho,
10 including the counties of Caribou, Bannock and Power.

11 D. The state of Idaho prohibited the use of slag
12 for residential construction in 1976. Immediately thereafter,
13 the Companies voluntarily suspended the use of slag in the
14 construction of all inhabited buildings. Slag continued to be
15 sold and used for other purposes such as road construction.

16 E. In 1977 and 1978, the Idaho Department of
17 Health and Welfare ("IDHW") conducted a gamma survey ("Peterson
18 Survey") in areas of Southeast Idaho, primarily Soda Springs and
19 Pocatello, where slag construction was prevalent. Gamma readings
20 associated with many residential properties in Soda Springs
21 exceeded 20 uR/hr, a level which may pose a public health concern
(40 C.F.R. § 192.12(b)(2)).

22 F. EPA's Idaho Radionuclide Study ("Idaho Study")
23 issued in April 1990, estimated radiation doses to populations in
24 Soda Springs and Pocatello from a variety of area sources. The
25 study concluded that the "primary source of gamma radiation in
26 both Pocatello and Soda Springs is radioactive slag, a residue

1 from phosphate industry processes." The Idaho Study further
2 concludes that "exposure to outdoor sources is the greatest
3 contributor to the population dose in Pocatello, due to slag used
4 in street paving, while that to the residents of Soda Springs is
5 mostly due to indoor (home) exposure, caused by slag in home
6 foundations." EPA determined on the basis of the Idaho Study
7 that there was a need to conduct additional sampling and
8 monitoring to determine individual radiation exposures associated
9 with past uses of slag in southeastern Idaho.

10 G. Following the release of the Idaho Study, the
11 Companies voluntarily suspended the sale of slag for all
12 construction uses pending the resolution of issues regarding the
13 past and future use of slag.

14 H. The Shoshone-Bannock Tribe passed a resolution
15 in 1990 prohibiting the use of slag on reservation lands.

16 I. The EPA Science Advisory Board ("SAB") issued
17 a letter report on January 21, 1992, to the EPA Administrator
18 regarding the Idaho Study. The report recognized that "gamma-
19 radiation exposure levels from elemental phosphorus slag can
20 reach 60-65 uR/hr in some areas, which is 4-5 times the
21 background level prevalent in Southeastern Idaho." Further, the
22 report recognized that "elevated gamma radiation levels occur in
23 Pocatello and Soda Springs such that some persons could receive
24 doses above the widely accepted population exposure guide of 100
25 millirems per year in excess of natural background".

1 J. The SAB recommended that EPA: (i) "work with
2 local and state officials, the public and industry to make
3 measurements for individuals based on their particular exposure
4 conditions"; (ii) "establish a set of graded decision guidelines
5 based on technical and economic factors for both short-term and
6 long-term exposure of the public due to past uses of slag"; and
7 (iii) "make risk assessments for those persons exposed within the
8 decision guidelines and provide them with information for making
9 informed decisions".

10 K. A draft 1992 EPA report on diffuse Naturally
11 Occurring Radioactive Materials (NORM) waste estimated the 70-
12 year lifetime risk of acquiring a fatal cancer from one year of
13 exposure to slag in building materials (average estimated
14 concentration of 33 picoCuries/gram for Radium-226), exclusive of
15 the radon inhalation pathway, to be approximately four (4) in
16 1000 for average persons in the critical population group.

17 L. Notice of this Consent Order has been given to
18 the state of Idaho and the Shoshone-Bannock Tribes.
19

20 VII. EPA CONCLUSION OF LAW

21 7.1 The radionuclide bearing slag generated by
22 the Companies' elemental phosphorus manufacturing plants, is a
23 "solid waste", as defined in Section 1004(27) of RCRA, 42 U.S.C.
24 § 6903(27).
25
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1 VIII. DETERMINATION

2 8.1 EPA has determined that the handling or use
3 of slag as a construction material in buildings, roads and other
4 construction in Southeast Idaho may present an imminent and
5 substantial endangerment to public health or the environment.
6

7 IX. WORK TO BE PERFORMED

8 9.1 The activities conducted under this Consent
9 Order are subject to EPA approval and shall be conducted in
10 accordance with applicable or relevant and appropriate laws,
11 regulations, EPA guidance, policies and procedures.

12 9.2 The Companies shall develop and implement
13 EPA-approved Work Plans and Schedules for determining the extent
14 and level of radionuclide releases associated with slag use in
15 Southeast Idaho. Specific tasks shall be detailed in the Work
16 Plans and implemented according to the Schedules. The Companies
17 shall submit a Methods Development Work Plan and an Exposure
18 Study Work Plan to EPA for review and approval. Each Plan shall
19 include a statement of work and workflow chart; a sampling and
20 analysis plan; a quality assurance/quality control plan; a data
21 management plan; a health and safety plan; and an implementation
22 schedule. The Methods Development Work Plan shall also include,
23 but not be limited to, the following provisions:

- 24 a) protocols for determining background reference
25 rates of exposure;
26

- 1 b) protocols for collecting accurate, precise,
2 representative, complete, and comparable exposure
3 data on individuals who may need to modify their
4 exposure conditions;
5 c) protocols for ascertaining and validating the
6 statistical significance of data sets;
7 d) protocols for slag identification, home testing,
8 personal dosimetry programs, time-of-exposure
9 studies, outdoor surveys, and establishing an
10 inventory of past uses and location of
11 slag-bearing materials; and
12 e) protocols for integrating the quality assured
13 survey data from relevant studies, including but
14 not limited to, the Peterson and Idaho Studies.

15 9.3 The draft Methods Development Work Plan and
16 Schedule shall be submitted to EPA within sixty (60) days after
17 the effective date of this Consent Order.

18 9.4 The Companies shall commence methods
19 development activities as set forth in the approved Work Plan,
20 including necessary sampling and monitoring, within thirty (30)
21 days after EPA approval of the Work Plan.

22 9.5 While the Companies are working on methods
23 development, EPA and the Technical Work Group ("TWG") described
24 in Section X below, will begin development of graded decision
25 guidelines consistent with the SAB recommendations to the maximum
26 extent practicable. EPA will finalize these guidelines before

1 the Companies commence their exposure studies. Radiation
2 protection principles, EPA risk assessment guidance, applicable
3 or relevant and appropriate laws and promulgated regulations, the
4 BEIR (Biological Effects of Ionizing Radiation) V Report, and
5 ICRP (International Committee on Radiation Protection) 60 shall
6 be considered in developing these guidelines. The guidelines are
7 intended to be used to evaluate the exposure data that will be
8 generated by the Companies' studies under this Consent Order.

9 9.6 Within sixty (60) days after written EPA
10 approval of the Methods Development Study Final Report, the
11 Companies shall submit the draft Exposure Study Work Plan to EPA
12 for review and approval.

13 9.7 The Companies shall commence their exposure
14 studies in accordance with the EPA approved Exposure Study Work
15 Plan within thirty (30) days after written EPA notice that the
16 graded decision guidelines have been finalized, and the Exposure
17 Study Work Plan has been approved.

18 9.8 Progress reports shall be submitted by the
19 Companies to EPA on or before the tenth (10th) day of each month
20 following the month in which this Consent Order is issued.

21 9.9 Upon EPA approval, the Work Plans and
22 Schedules, including all terms and conditions therein, are
23 incorporated into and made an enforceable part of this Consent
24 Order by this reference. The Work Plans, Schedules, and all
25 documents required thereby, or submitted in accordance therewith,
26 shall constitute "deliverables" for purposes of this Consent

1 Order, including but not limited to, the plans and protocols in
2 Paragraph 9.2, data reports, technical memoranda, and draft and
3 final investigation reports.

4 9.10 At EPA's direction, the Companies shall fully
5 correct and modify all deliverables and incorporate and integrate
6 all information and comments supplied by EPA in either subsequent
7 or resubmitted deliverables within fourteen (14) days after
8 receipt of EPA comments, or such longer or shorter time as EPA
9 may specify. At the time the revised deliverable is submitted,
10 the Companies shall submit a cover letter describing how each EPA
11 comment was addressed along with a statement certifying that no
12 other changes were made to the deliverable. Failure to fully
13 modify and correct any deliverable in accordance with this
14 paragraph is non-compliance with this Consent Order. In
15 addition, EPA may unilaterally modify any deliverable, and the
16 Companies shall take action in accordance with such modified
17 deliverable.

18 9.11 Neither failure of EPA to expressly approve
19 or disapprove a plan, report, deliverable, or any other
20 submission within a specified time period, nor the absence of EPA
21 comments, shall be construed as approval by EPA. All approvals
22 by EPA shall be in writing.

23 9.12 The following major deliverables required by
24 under this Consent Order shall be subject to review by the TWG:
25 the draft Methods Development Study Work Plan, the draft Methods
26 Development Study Report, the draft Graded Decision Guidelines,

1 the draft Exposure Study Work Plan and draft Exposure Study
2 Report.

3
4 **X. TECHNICAL WORK GROUP**

5 10.1 The development and implementation of studies
6 and graded decision guidelines as described in this Consent Order
7 may raise complex technical and/or socio-economic issues. EPA
8 and the Companies will establish a Technical Work Group ("TWG")
9 to assist them in addressing these matters. This TWG will
10 provide assistance regarding the design and implementation of the
11 radiological exposure studies and the development of the graded
12 decision guidelines under this agreement. The TWG shall consist
13 of no more than twelve (12) members. EPA and the Companies shall
14 each designate two radiation scientists (4 total) for the TWG.
15 Two community representatives (2) shall be designated, one each
16 by the mayors of Pocatello and Soda Springs. Other members of
17 the TWG shall include the project coordinator and his assistant
18 for EPA (2), the project coordinators for The Monsanto Company
19 (1) and FMC Corporation (1), a representative from the state of
20 Idaho Department of Health and Welfare, and a representative from
21 the Shoshone-Bannock Tribe. EPA and the Companies shall make
22 their designations within fourteen (14) days after the effective
23 date of this agreement.

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XI. ADDITIONAL WORK

11.1 If at any time before the termination of this Consent Order, the Companies identify a need for additional data, the Companies shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within seven (7) days after such identification.

11.2 If EPA determines that other tasks, in addition to the tasks defined in the EPA-approved Work Plans required by Section IX above, are necessary to accomplish the purpose and objectives of this Consent Order, EPA will notify the Companies in writing of the additional tasks to be performed. The Companies shall either confirm their willingness to perform the additional tasks in writing to EPA within fourteen (14) days after receipt of the EPA notice, or invoke the dispute resolution provisions in Section XVIII of this Consent Order. Subject to the resolution of any dispute, the Companies shall implement the additional tasks which EPA determines to be necessary. The additional tasks shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan. At any point, EPA may conduct any tasks itself, seek reimbursement of response costs from the Companies, and/or seek any other appropriate relief.

XII. QUALITY ASSURANCE

12.1 Throughout all sample collection, transportation, and analysis activities conducted pursuant to
CONSENT ORDER FOR THE MONSANTO COMPANY
AND FMC CORPORATION - Page 13

1 this Consent Order, the Companies shall use procedures for
2 quality assurance ("QA"), quality control ("QC"), and for chain-
3 of-custody in accordance with approved EPA methods. The
4 Companies shall require each laboratory used to perform any work
5 related to this Consent Order to employ approved EPA methods, and
6 to participate in a QA/QC program equivalent to the EPA QA/QC
7 program and to be consistent with the EPA document, QAMS-005/80.
8 The Companies shall submit a QA/QC plan to EPA for approval as
9 part of the Work Plans required by Paragraph 9.2 above. No field
10 work or sampling activities may be initiated by the Companies
11 prior to EPA approval of the QA/QC plan.
12

13 XIII. AVAILABILITY OF DATA

14 13.1 The Companies shall submit quality assured
15 results of all sampling, tests, and other data generated by the
16 Companies pursuant to this Consent Order to EPA and IDHW within
17 seven (7) days after QA/AC review is completed, but in no event
18 later than thirty (30) days after sampling or field testing, in
19 accordance with the EPA-approved Work Plans. All raw data
20 generated pursuant to this Consent Order shall be made available
21 to EPA or IDHW upon request. The deadlines established in this
22 paragraph may be extended by the EPA Project Coordinator in
23 writing upon request by the Companies.

24 13.2 Quality assured information including quality
25 assured data generated pursuant to this Order shall be provided
26

1 to the affected communities, including individual homeowners, as
2 soon as practicable following EPA review.

4 XIV. ACCESS

5 14.1 The Companies will obtain or use best efforts
6 to obtain written access agreements from all owners of inhabited
7 dwellings, or those with a possessory interest in such dwellings,
8 to be tested, at least twenty (20) days prior to the time access
9 is needed.

11 XV. CONTRACTORS

12 15.1 All work performed under this Consent Order
13 shall be under the direction and supervision of qualified
14 personnel. Not later than fourteen (14) days after the effective
15 date of this Consent Order, and before any work begins, the
16 Companies shall notify EPA, in writing, of the names, titles, and
17 qualifications of the personnel, including contractors,
18 subcontractors, consultants, and laboratories, to be used in
19 carrying out such work. The qualifications of the persons
20 undertaking the work for the Companies shall be subject to EPA's
21 review for verification that such persons meet appropriate
22 technical background and experience requirements. If EPA
23 notifies the Companies in writing that any person(s) are not
24 adequately qualified, the Companies shall replace said person(s),
25 and shall notify EPA of the identity and qualifications of
26 replacement(s) within seven (7) days after the notice. If EPA

1 subsequently finds replacement(s) to be less than adequately
2 qualified, the Companies shall have failed to comply with this
3 Consent Order and EPA may conduct all or part of the work, seek
4 reimbursement of costs and/or payment of penalties from the
5 Companies, or take any other actions authorized by law. During
6 the course of the work, the Companies shall notify EPA in writing
7 seven (7) days in advance of any changes in, or additions to the
8 personnel used to carry out the work, including their names,
9 titles, and qualifications. EPA shall have the rights set forth
10 in this paragraph to review the qualifications of all new or
11 replacement personnel.

12
13 **XVI. DESIGNATED PROJECT COORDINATORS**

14 16.1 Not later than five (5) days after the
15 effective date of this Consent Order, the Companies and EPA shall
16 each designate a Project Coordinator. Each Project Coordinator
17 shall be responsible for overseeing his/her principal's
18 implementation of this Consent Order. To the extent possible,
19 all communication between the Parties (including letters,
20 reports, etc) concerning activities related to this Consent Order
21 shall be directed to the Project Coordinators.

22 16.2 The Companies' Project Coordinators' shall be
23 qualified, competent persons with experience in waste site
24 investigations, and shall have the skills necessary to direct and
25 supervise the activities described in this Consent Order. Upon
26 selection of a Project Coordinator or any replacement thereof,

1 the Companies shall submit written notice of the Project
2 Coordinator's qualifications to EPA.

3 16.3 The Parties may change their Project
4 Coordinator by sending written notification to the other Project
5 Coordinators no later than five (5) days before such change.

6 16.4 The Project Coordinator designated by EPA
7 shall have the authority described in the National Contingency
8 Plan ("NCP"), 40 C.F.R. Part 300, as amended, for a Remedial
9 Project Manager or On-Scene Coordinator.

10
11 **XVII. DOCUMENTS**

12 17.1 All documents transmitted to EPA, including
13 all deliverables and correspondence, related to this Consent
14 Order, shall be delivered to the EPA Project Coordinator, and to
15 such other persons as EPA may specify in writing.

16 17.2 The Companies shall preserve, for a minimum
17 of five (5) years after EPA approval of the Companies'
18 certification of completion of the matters covered by this
19 Consent Order, all records and documents in their possession or
20 control, or which come into the control of their employees,
21 agents, accountants or contractors which relate to work performed
22 pursuant to this Consent Order, despite any record destruction
23 policy to the contrary. The Companies shall notify EPA in
24 writing at least sixty (60) days prior to the destruction of any
25 such records or documents, of their intent to destroy such

1 records or documents after the five (5) year period specified in
2 this paragraph.

3 17.3 Within ten (10) days after a request by EPA,
4 the Companies shall submit to EPA copies of any draft and final
5 plans, draft and final task memoranda, including memoranda
6 recording field modifications, recommendations for further
7 action, quality assurance memoranda and audits, drafts and final
8 reports, raw data, field notes, laboratory analytical reports,
9 and any other documents related to activities planned or
10 undertaken by the Companies which relate to this Consent Order.
11 At the time of any such EPA request, the Companies may withhold
12 documents only by asserting, with sufficient justification, that
13 such documents are legally privileged. Such assertion and
14 justification may be challenged by EPA in the proper judicial
15 forum.

16 17.4 The Companies may assert a claim of business
17 confidentiality for part or all of the information they submit to
18 EPA pursuant to this Consent Order. This claim shall be asserted
19 and the information protected in the manner described in 40
20 C.F.R. § 2.203(b). If no such claim accompanies the information
21 when it is submitted to EPA, it may be made available to the
22 public by EPA without further notice to the Companies. The
23 Companies shall not assert any confidentiality claim with respect
24 to any sampling or monitoring data.

XVIII. DELAY AND FORCE MAJEURE

18.1 "Force Majeure," for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Companies and of any entity controlled by the Companies, including their contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding the Companies' best efforts to avoid the delay. The requirement that the Companies exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential Force Majeure event (a) as it is occurring, and (b) following the potential Force Majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not Force Majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Consent Order, financial difficulty, normal climatic or precipitation events, or failure of a contractor or subcontractor to perform the obligations under this Consent Order.

18.2 If any event occurs which causes delay in the achievement of any of the requirements of this Consent Order, the Companies shall, no later than twenty-four hours after the occurrence of such event, notify EPA orally of the occurrence and delay. Within seven (7) days after such event, the Companies shall notify EPA in writing of the nature of the delay, the anticipated duration and cause of the delay, the measures taken and to be taken to prevent or minimize the delay, and the

1 schedule to mitigate the effect of the delay. The Companies
2 shall exercise best efforts to avoid or minimize any delay and
3 effects of delay.

4 18.3 If EPA agrees that the delay or anticipated
5 delay is attributable to Force Majeure, the time for performance
6 of the obligations under this Consent Order that are directly
7 affected by the Force Majeure event shall be extended by
8 agreement of the Parties for a period of time not to exceed the
9 actual duration of the delay caused by Force Majeure event. An
10 extension of the time for performance of the obligation directly
11 affected by the Force Majeure event shall not, of itself, extend
12 the time for performance of any subsequent obligation.

13 18.4 If EPA does not agree that the delay or
14 anticipated delay has been or will be caused by a Force Majeure
15 event, or does not agree on the length of the extension, the
16 issue shall be subject to the dispute resolutions procedures set
17 forth in this Consent Order. In any such proceeding, the
18 Companies shall have the burden of demonstrating by a
19 preponderance of the evidence that the delay or anticipated delay
20 has been or will be caused by a Force Majeure event, that the
21 duration of the delay was or will be warranted under the
22 circumstances, that the Companies did exercise or are exercising
23 due diligence by using their best efforts to avoid and mitigate
24 the effects of the delay, and that the Companies have complied
25 with the requirements of this section.

1 XIX. DISPUTE RESOLUTION

2 19.1 Any dispute under this Consent Order may be
3 addressed through the dispute resolution procedures of this
4 section, whether or not specifically authorized by the provisions
5 of this Consent Order.

6 19.2 If a dispute arises under this Consent Order,
7 the Companies shall notify EPA's Project Coordinator in writing
8 by certified mail, return receipt requested, of the dispute
9 within fourteen (14) days after receipt of notice from EPA of any
10 deficiency, or that any requirement has not been met. The
11 Companies written notice shall define the dispute, and state the
12 basis of the Companies' position. EPA and the Companies shall
13 then have fourteen (14) days from EPA receipt of the Companies'
14 notice to attempt in good faith to resolve the dispute. If
15 agreement is reached, the resolution shall be set forth in a
16 written statement, signed by the Parties, and incorporated into
17 this Consent Order. If agreement is not reached within this
18 fourteen (14) day period, EPA shall provide a written statement
19 of its decision to the Companies which shall be incorporated into
20 this Consent Order. For those matters which involve technical or
21 scientific issues, EPA may consult with the TWG prior to issuing
22 its decision. Within seven (7) days after receipt of EPA's
23 written decision, the Companies shall advise EPA in writing
24 whether they will implement EPA's decision. Failure by the
25 Companies to implement the decision is non-compliance with this

1 Consent Order, and EPA may elect to implement the decision, or
2 take any other action it may deem necessary within its authority.

3 19.3 These dispute resolution procedures shall not
4 provide a basis for delay of any activities required by this
5 Consent Order, unless the EPA Project Coordinator agrees in
6 writing to a schedule extension or alteration.

7
8 XX. STIPULATED PENALTIES

9 20.1 For each day the Companies fail to timely
10 produce a deliverable of acceptable quality, or otherwise fail to
11 perform in accordance with the requirements of this Consent
12 Order, the Companies shall pay stipulated penalties. Penalties
13 shall begin to accrue on the day that performance is due or a
14 violation occurs, and shall extend until such time as acceptable
15 performance occurs.

16 20.2 Stipulated penalties shall accrue in the
17 following amounts for each day of non-compliance as follows:

18 For Major Deliverables

19 Period of Failure	Penalty Per Violation Per Day
20 first seven (7) days	\$250 per day
21 days eight (8) - fifteen (15)	\$1,000 per day
22 days sixteen (16) - thirty (30)	\$3,000 per day
23 days thirty-one (31) - ninety (90)	\$7,500 per day

24 Major deliverables for purposes of this section include each
25 draft submission of: 1) the Methods Development Work Plan; 2) the

1 Methods Development Final Report; 3) the Exposure Study Work
2 Plan; and 4) the Exposure Study Final Report.

3 For Minor Deliverables and all other requirements

4 Period of Failure	Penalty Per Violation Per Day
5 first seven (7) days	\$200 per day
6 days eight (8) - fifteen (15)	\$500 per day
7 days sixteen (16) - thirty (30)	\$2,000 per day
8 days thirty-one (31) - ninety (90)	\$5,000 per day

9 20.3 The Companies shall make all payments by
10 forwarding a certified or cashiers check payable to the
11 "Hazardous Substance Superfund" to:

12 U.S. Environmental Protection Agency
13 Region 10
14 Superfund Accounting
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

15 Checks shall also state "Southeast Idaho Slag", the
16 Identification number TGB10N4J1, and the EPA docket number of
17 this Consent Order. A copy of the check and transmittal letters
18 shall be sent to the EPA Project Coordinator.

19 20.4 Payment shall be due within thirty (30) days
20 after receipt of a demand letter from EPA. The Companies shall
21 pay interest on any unpaid balance, which shall begin to accrue
22 at the end of the thirty (30) day period, at the rate established
23 by the U.S. Department of Treasury.

XXI. REIMBURSEMENT

21.1 Following the issuance of this Consent Order, EPA shall submit an accounting, including the cost documentation set forth in paragraph 21.2 below which may be applicable, of all past costs which are not inconsistent with the NCP, plus interest, incurred by the United States up to and including September, 1992. The Companies shall, within sixty (60) days after receipt of said accounting, remit a certified or cashier's check for the amount of costs requested by EPA, subject to the Companies' right to enter into dispute resolution to 1) dispute accounting errors or 2) argue that any costs sought by EPA are other than "not inconsistent with the NCP." The Companies shall identify any contested costs and the basis of their objection in writing. All undisputed costs shall be remitted by the Companies as set forth above. Disputed costs shall be paid, if required, ten (10) days after resolution of the dispute. The Companies shall have the burden of proving by a preponderance of the evidence any accounting error or inconsistency with the NCP. Interest shall accrue during any cost dispute. Interest shall begin to accrue on the day after the last date payment is due. The rate shall be the rate of interest on investments for the Hazardous Substances Superfund in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

21.2 After September 30th of each year in which this Consent Order is in effect, EPA shall give the Companies an accounting of costs incurred by the United States in connection

1 with this Consent Order. Such costs shall include all direct and
2 indirect costs incurred by the United States in overseeing the
3 Companies' implementation of the requirements of this Consent
4 Order, including but not limited to, contractor costs,
5 cooperative agreement costs, compliance monitoring, including the
6 collection and analysis of split samples, inspections, visits,
7 discussions regarding disputes that may arise regarding this
8 Consent Order, review and approval or disapproval of submissions,
9 conduct of community relations activities, costs incurred to
10 obtain access, and costs of doing or redoing any of the
11 Companies' tasks. Summaries, including EPA's certified Agency
12 Financial Management System summary data (SCORE Reports), or
13 other summaries as certified by EPA, may serve as a basis for
14 payment demands by EPA. The Companies may review the following
15 EPA oversight cost documentation: EPA personnel timesheets,
16 travel authorizations and vouchers, EPA contractor monthly
17 invoices; and all applicable contract laboratory program ("CLP")
18 invoices.

19 21.3 For all payments under this section, the
20 Companies Respondents shall remit a certified or cashier'
21 s check, made payable to the "Hazardous Substance Superfund," to
22 the following address or such other address as EPA may designate,
23 in writing:

 U.S. EPA Region 10
 Superfund Accounting
 P.O. Box 360903M
 Pittsburgh, Pennsylvania 15251

1 of the check and transmittal letters shall be sent simultaneously
2 to the EPA Project Coordinator.

3 21.4 Payment shall be due within thirty (30) days
4 after receipt of the cost accounting information from EPA. The
5 Companies shall pay interest on any unpaid balance, which shall
6 begin to accrue at the end of the 30-day period, at the rate of
7 interest on investments for the Hazardous Substances Superfund in
8 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

9 21.5 Disputes concerning future costs shall be
10 limited to accounting errors and the inclusion of costs outside
11 the scope of this Consent Order, or which are other than "not
12 inconsistent with the NCP." The Companies shall identify any
13 contested costs and the basis of their objection in writing. All
14 undisputed costs shall be remitted by the Companies in accordance
15 with the schedule set forth above. Disputed costs shall be paid,
16 if required, ten (10) days after resolution of the dispute. The
17 Companies shall have the burden of proving by a preponderance of
18 the evidence any EPA accounting error, or the inclusion of any
19 cost outside the scope of this Consent Order or inconsistent with
20 the NCP. Interest shall accrue during any cost dispute.

21
22 **XXII. RESERVATIONS OF RIGHTS**

23 22.1 The payment of stipulated penalties and costs
24 required above, shall not preclude EPA from pursuing any other
25 remedies or sanctions which may be available by reason of the
26

1 Companies' failure to comply with any portion of this Consent
2 Order.

3 22.2 Except as expressly provided in this Consent
4 Order, each Party reserves all rights and defenses it may have.
5 Nothing in this Consent Order will affect EPA's removal authority
6 or EPA's response or enforcement authorities, including but not
7 limited to, the right to seek injunctive relief, stipulated
8 penalties, statutory penalties, and/or punitive damages, nor
9 preclude the United States from taking action to enforce this
10 Consent Order, nor from taking any action pursuant to CERCLA, or
11 any other applicable authority.

12
13 XXIII. OTHER CLAIMS

14 23.1 By entering into this Consent Order, the
15 Companies waive the right to seek reimbursement under Section
16 106(b) of CERCLA, 42 U.S.C. § 9606(b), or to present a claim
17 under Sections 111 or 112 of CERCLA, 42 U.S.C. § 9611 or 9612,
18 for the costs of implementing this Consent Order. This Consent
19 Order does not constitute any decision on preauthorization of
20 funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
21 However, the Companies expressly reserve any and all claims they
22 may have against any Department, Agency or organizational unit of
23 the United States other than EPA. Such claims may include, but
24 are not limited to, contribution and counterclaims relating to or
25 arising out of matters covered by or referenced in this Consent
26 Order.

1 XXIV. INDEMNIFICATION

2 24.1 The United States including its agencies,
3 offices, employees, and agents, shall not be liable for any
4 injuries or damages to persons or property resulting from acts or
5 omissions by the Companies, their officers, employees, receivers,
6 trustees, agents, or contractors in carrying out any activities
7 pursuant to this Consent Order; nor shall the United States be
8 deemed a party to any contract made by either Company, or their
9 agents in carrying out any activities pursuant to this Consent
10 Order. The Companies shall save and hold harmless the United
11 States, its agencies, officers, employees, and agents from, and
12 shall indemnify the United States against and for, any and all
13 claims or causes of action arising from or on account of acts or
14 omissions of the Companies, their agents or representatives,
15 relating in any way to any activities pursuant to this Consent
16 Order except to the extent such claims or causes of action relate
17 to negligence, gross negligence or willful misconduct on the part
18 of EPA or its contractors.

19
20 XXV. JUDICIAL REVIEW

21 25.1 The Companies shall not seek judicial review of
22 this Consent Order in any action except an action by the United
23 States to: 1) enforce this Consent Order; 2) recover costs
24 incurred in connection with this Consent Order; or 3) compel
25 action relating to the slag addressed by this Consent Order.
26 Judicial review of this Consent Order shall be limited to the

1 administrative record. Otherwise applicable principles of
2 administrative law shall govern whether any supplemental
3 materials may be considered by the court. In considering
4 objections raised in any judicial review, EPA's decisions shall
5 be upheld unless the court finds they were arbitrary and
6 capricious or otherwise not in accordance with law. Nothing in
7 this paragraph shall limit any action by the Companies against
8 any party, including any departments, agencies or subdivisions of
9 the United States other than EPA, to recover costs incurred in
10 implementing this Consent Order, or for damages or contribution
11 pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or other
12 applicable law; or any action pursuant to Section 310 of CERCLA,
13 42 U.S.C. § 9659, or Section 7002 of RCRA, 42 U.S.C. § 6972.

14 15 XXVI. COMMUNITY RELATIONS

16 26.1 Community relations activities relevant to
17 the implementation of this Order are the primary responsibility
18 of EPA and its representatives. The Companies shall provide
19 appropriate assistance upon EPA request. Whenever possible, the
20 parties agree to cooperate in the conduct of community relations
21 activities.

22 26.2 The parties recognize the considerable public
23 interest in matters covered by this Consent Order, and the value
24 of broad community involvement in the process, particularly in
25 intrusive or potentially disruptive activities such as home
26 testing. The Parties agree to cooperate in keeping the affected

1 communities informed of the progress in the implementation of
2 this Consent Order, and to facilitate community participation in
3 planning and decision-making to the maximum extent practicable,
4 including, but not limited to, review of EPA approved Work Plans,
5 Graded Decision Guidelines, and other EPA approved technical
6 interim work products.

7
8 **XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

9 27.1 The effective date of this Consent Order
10 shall be the date it is issued by EPA.

11 27.2 This Consent Order may be amended by mutual
12 agreement of EPA and the Companies. Amendments shall be in
13 writing and shall be effective when executed by EPA.

14
15 **XXVIII. COMPLETION**

16 28.1 The requirements of this Consent Order shall
17 be completed when the Companies demonstrate in writing and
18 certify to EPA satisfaction that all requirements of this Consent
19 Order have been satisfied, and EPA has approved the certification
20 in writing. The Companies may request EPA approval of their
21 certification of completion at any time following the submission
22 of certified documentation.

23
24 **XXIX. SIGNATORIES**

25 29.1 The undersigned representatives certify that
26 they are fully authorized to enter into this Consent Order and to

1
2 For FMC Corporation:
3

4
5 BY:

J Thomas Bernasch

DATE:

Oct 30, 1992

6
7
8 IT IS SO ORDERED:

9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
10
11

12 BY:

DATE:

Randall F. Smith, Director
13 Hazardous Waste Division
14 EPA Region 10
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27 CONSENT ORDER FOR THE MONSANTO COMPANY
28 AND FMC CORPORATION - Page 32

1 execute and legally bind their respective principal hereto.

2
3 For The Monsanto Company:

4
5
6 BY:

C. M. McCullough

DATE:

Nov-2-92
16-2-92

1
2 For FMC Corporation:
3
4

5 BY: _____ DATE: _____
6
7

8 IT IS SO ORDERED:

9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
10

11
12 BY: Randall F. Smith DATE: 11/4/92
13 Randall F. Smith, Director
14 Hazardous Waste Division
15 EPA Region 10
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26

For FMC Corporation:

BY: _____ DATE: _____

IT IS SO ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10

BY: _____ DATE: _____

Randall F. Smith, Director
Hazardous Waste Division
EPA Region 10

CONCURRENCE

INITIAL	<i>MG</i>	<i>CO</i>	<i>CO for</i>	<i>CK</i>	<i>OK</i>
NAME	GLASSER	ORDINE	BOYD	KRUEGER	RUSHIN
DATE	11-2-92	11-2-92	11-2-92	11-2-92	11-2-92

CONCURRENCE

INITIAL	<i>SK</i>				
NAME	KOWALSKI	SMITH			
DATE	11/3/92				